

Proposed High Impact Protection Ordinance Rutherford County, N.C.

Article I: Introduction

Section 1. General Purpose

The following regulations of High Impact Industry are adopted for the purpose of promoting the health, safety and general welfare of the citizens of Rutherford County. The Rutherford County Commissioners hereby establish certain criteria relating to high impact industries. These industries by their very nature produce objectionable levels of noise, odors, vibrations, fumes, light, smoke, and other impacts upon the lands adjacent to them. These standards shall allow for the placement and growth of such uses, while maintaining the health, safety, and general welfare standards of established residential and commercial areas in Rutherford County.

This ordinance does not affect land uses not listed herein.

Section 2. Legal Authority

This ordinance is adopted under the authority granted to counties by the General Assembly of North Carolina in General Statute 153A, Article 18 and other pertinent statutes and amendments thereto.

Section 3. Territorial Coverage

Pursuant to N.C.G.S. § 153A-122, this ordinance shall apply to all areas of unincorporated Rutherford County, which are not within the extra-territorial jurisdiction of any municipalities. All municipalities, their respective corporate limits, and extra-territorial jurisdiction shall be exempted from the ordinance, unless they choose to adopt this ordinance or some form thereof.

Article II: Regulated Industries

Section 1. Regulated Uses

This Ordinance applies only to the following listed high impact industries. Each industry is grouped into categories based on impact to the surrounding area.

Class I	1. AIRPORTS 2. CONCRETE SUPPLIERS (READY MIX)
CLASS II	1. Chemical Manufacturing and Storage Facilities 2. Cement Manufacturers 3. Sawmills 4. Propane, Gasoline, and Fuel Oil Bulk Storage Facilities 5. Scrap Metal Salvage Yards 6. Chip Mills, Enclosed
CLASS III	1. Commercial Incinerators 2. Motor Sports Activities 3. Chip Mills, Open 4. Local Solid Waste Management Facilities/Landfills
CLASS IV	1. Asphalt Plants 2. Hazardous Waste Facilities 3. Slaughtering and Processing Plants 4. Pulp and Paper Mills
CLASS V	1. Explosives Manufacturing, Storage and Wholesale 2. Regional Solid Waste Management Facilities/Landfills 3. Mining and Extraction Operations and Quarries

Section 2. Definitions

The following definitions shall be used for the purpose of interpreting this ordinance. For terms not defined below, the common usage of the term shall prevail.

1. *Airport* – Any public or private area of land or water that is designed or used on a recurring basis for the landing and take-off of aircraft, including terminal buildings, towers, runways, and other facilities directly pertaining to the operation of the airport. This definition shall not include an airstrip.
2. *Airstrip* – An area of land or water, located on private property, which is not used in conjunction with flying lessons or the rental or sale of aircraft which the owner of such land uses (or authorizes the use of) for landing and take-off of (i) not more than three aircraft owned or leased by the owner of the property, or (ii) aircraft engaged in crop dusting of land owned or leased by the owner of the airstrip.

3. *Area of Operation* – The portion of a tract of land on which a high impact industry is situated that is actually under use for operations by the high impact industry, including the area occupied by buildings, structures, equipment, parking, storage, and other similar operations. Driveways and internal drives may extend beyond the area of operation.
4. *Asphalt Plant* – A plant or facility, with all related equipment, for the manufacture and production of a black or brown “tarlike” variety of bitumen, which, when mixed with proper amounts of sand or gravel or both, results in material suitable for paving and/or roofing, etc.
5. *Board of Commissioners* – The Rutherford County Board of Commissioners.
6. *Cement Manufacturer* – An establishment primarily engaged in manufacturing portland, natural, masonry, pozzalanic, and other hydraulic cements. Cement manufacturing establishments may calcine earths or mine, quarry, manufacture, or purchase lime.
7. *Chemical* – An element, chemical compound, mixture of elements or compounds, or both. This definition shall not include pharmaceutical manufacturing.
8. *Chemical Manufacturing* – A facility primarily involved in the production, synthesis, formation, processing, refining, manufacturing, and/or distribution of chemical products in bulk, for other than retail sales on-site.
9. *Chemical Storage Facilities* – A facility whose primary use is for the storage of chemical compounds in bulk.
10. *Chip Mill* – A mechanized facility that grinds whole logs into wood chips for paper, particle board and other products and is capable of producing at least 250,000 tons annually.
11. *Commercial* – Use for an occupation, employment, or enterprise that is carried on for profit by the owner, lessee, or licensee.
12. *Commercial Incinerators* - Any enclosed device that burns more than 250 pounds of any material per hour other than the classical boiler fossil fuels, such as natural gas, propane, coal or fuel oil, which is a principal use on any lot or parcel.
13. *Concrete Supplier (Ready Mix)* – An establishment primarily engaged in manufacturing hydraulic cement, including Portland, natural, and masonry cements to be delivered from the site to a purchaser in a plastic and unhardened state. This industry includes production and sale of central-

mixed concrete, shrink mixed concrete, and truck mixed concrete. Also included are the manufacture of concrete products from a combination of cement and aggregate.

14. *Cone of Illumination* – The area, as measured on the ground, that is being illuminated by a lighting device.
15. *Construction Activities* – Any studies, investigations, operations, improvements, or other activities undertaken at the site of a proposed high impact land use pertaining to the construction, placement, erection, or establishment of the same, including but not limited to surveys, soil and other environmental tests, clearing and grading, pouring footers or pads, placing building materials or equipment at the site, locating or constructing buildings, structures, or other improvements, or any other similar activities.
16. *Convenience Center/Transfer Station* – A facility used for the collection, temporary storage, and transfer of solid waste to a landfill as defined by this ordinance.
17. *County* – The County of Rutherford.
18. *Explosives Manufacturing* – Manufacturing of a chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion. This term includes but is not limited to dynamite, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniting cord, igniters, and display fireworks, but does not include hand-loaded small arms ammunition.
19. *Hazardous Waste Facility* – A facility designed for the collection, storage, processing, recycling, recovery, treatment and/or disposal of hazardous waste. (source: NCGS 130A-290)
20. *High Impact Industry* – A use listed in Article II, Section 1 of this Ordinance that may by their very nature produce objectionable levels of noise, odors, vibrations, fumes, light, smoke, and/or other impacts upon the lands adjacent to them.
21. *Industrial* – Use engaged in the manufacturing, and basic processing of materials or products predominantly from extracted or raw materials, or previously prepared materials, including processing, fabrication, assembly, treatment, packaging, storage, sales, and distribution of such products.
22. *Industrial Park* – A planned industrial area, funded by public or private investment, designed and equipped to accommodate a community of

industries, providing them with all necessary facilities and services among compatible uses.

23. *Light Mitigation* – A good faith effort to reduce the emission of light or diminish the effects that emitted light has on adjacent parcels or the neighborhood.
24. *Manufacturer and/or Storage Facility of Bulk Inflammables (Fuel Oil, Propane, Gasoline)*- A facility whose primary purpose is one of the following:
- (1) The production, synthesis, formation, processing, refining, manufacturing, distribution, and/or storage of chemical products in bulk.
 - (2) The storage, distribution, mixing or transfer of flammable or combustible liquids or gases received by or transferred by tank vessel, pipelines, tank car, piping, or portable tank or container except such storage, distribution, mixing or transfer of flammable or combustible liquids or gasses shall not include filling stations or convenience centers used solely for retail distribution to individual customers.
25. *Medical Waste Facility* – A facility that generates, stores or treats medical waste as defined by G.S. §130A-309.26a.
26. *Mining, Quarrying, or Resource Extraction* – An operation for the digging, extraction, mining, or quarrying of minerals, ores, soils, and other solid matter for commercial purposes. This definition shall not include excavation or grading when conducted solely in aid of on-site farming or of on-site construction for purposes other than mining. Removal of overburden and mining of limited amounts of any ores or mineral solids shall not be considered mining when done only for the purpose and to the extent necessary to determine the location, quantity, or quality of any natural deposit, provided that the affected land resulting from any such exploratory excavation does not exceed one acre in area. This definition does not include “gem” or other mining generally operated as a commercial use for the general public.
27. *Motor Sports Activities* – The use of any parcel by an establishment or business for the operation, for more than two hours during any eight hour time period, of more than three motor propelled conveyances powered by internal combustion engines including but not limited to automobiles, motorcycles, and All Terrain Vehicles.

28. *Non-Conforming Use* – Any use which legally existed on the effective date of this ordinance, and which does not conform with the regulations of this ordinance.
29. *Noise Mitigation* – A good faith effort to reduce the emission of noise or diminish the effects that emitted noise has on adjacent parcels or the neighborhood.
30. *Objectionable* – Undesirable, offensive (from Webster's Dictionary).
31. *Ordinance Administrator* – The Rutherford County Department of Planning and Inspections.
32. *Paper Mill* – An establishment primarily engaged in manufacturing paper from pulp. These establishments may manufacture or purchase pulp.
33. *Perennial Stream* - A constantly flowing, drought-resistant stream that is typically depicted by a thin continuous blue line on the most recent version of the USGS 1:24,000 (7.5 minute) scale topographic maps (or as determined by local government studies), unless other provisions have been made.
34. *Person* – A firm, corporation, general partnership, limited partnership, limited liability company, sole proprietor, individual, individual acting on behalf of another, or any other entity of any type whatsoever.
35. *Pharmaceutical Manufacturing* - Establishments primarily engaged in one or more of the following: (1) manufacturing biological and medicinal products; (2) processing (i.e., grading, grinding, and milling) botanical drugs and herbs; (3) isolating active medicinal principals from botanical drugs and herbs; and (4) manufacturing pharmaceutical products intended for internal and external consumption in such forms as ampoules, tablets, capsules, vials, ointments, powders, solutions, and suspensions.
36. *Planning Commission* – The Rutherford County Planning Commission.
37. *Planning Department* – The Rutherford County Department of Planning and Inspections.
38. *Principal Use* - A primary purpose for which land, buildings or other improvements is arranged, designed, intended or used, including the storage or use of supplies, inventory, materials, equipment or products associated therewith.
39. *Propane* – A heavy flammable gaseous alkane C₃H₈, found in crude petroleum and natural gas, also known as LP Gas.

40. *Pulp Mill* - This industry comprises establishments primarily engaged in manufacturing pulp without manufacturing paper or paperboard. The pulp is made by separating the cellulose fibers from the other impurities in wood or other materials, such as used or recycled rags, linters, scrap paper, and straw.
41. *Sawmill*- Any commercial operation employing three or more fulltime employees established for a period of six months or more where timber is customarily processed into raw lumber, finished wood products or other wood products, regardless of whether the products are sold on premises or transferred to another facility for storage and sale. This definition includes the reprocessing of lumber and wood planning operations.
42. *Scrap Metal Salvage Yards* – An establishment engaged in the wholesale distribution of automotive scrap, industrial scrap, and other recyclable materials. This definition also includes auto wreckers primarily engaged in dismantling motor vehicles for the purpose of wholesaling scrap.
43. *Screening* – A continuous area of planted or existing vegetation, which at all times of the year has trees, shrubbery, and/or other natural vegetation sufficient in height, density, and foliage to screen a high impact land use from the view of persons and motorists not on the property and to reasonably prevent airborne particulate matter from escaping therefrom. For the purpose of this ordinance, screening shall be broken into the following two categories:
- Broken Screen* – A screening device, as defined above, that is at least 75% opaque at maturity.
- Opaque Screen* - A screening device, as defined above, that is at least 95% opaque at maturity.
44. *Setback* - A continuous strip of land, measured from the property lines or from any street bordering or traversing the property (whichever is closer to the principal use or building) in which no principal use is permitted.
45. *Slaughtering and Processing Plant* – An establishment primarily engaged in slaughtering, dressing, packing, freezing, canning, cooking and/or curing animals or poultry or their by-products or processing or manufacturing products from such animals or poultry or their by-products; and establishments primarily engaged in the collection and/or processing of the inedible portion(s) of animals or poultry or their carcasses. This definition specifically excludes: slaughtering and processing activities performed for personal use only and those slaughtering and processing plants processing less than 100 animals per month for other than personal use.

46. *Solid Waste Management Facility/Landfill* – Land and equipment, other than incinerators, used in the management of solid waste, including landfills and excluding convenience and transfer stations. These facilities shall be broken into the following two categories:

Local Solid Waste Management Facility/Landfill – A public or private facility that services Rutherford County residents only.

Regional Solid Waste Management Facility/Landfill – A public or private facility which is not limited to servicing Rutherford County residents only.

Section 3. Regulations and Standards

No high impact use of a parcel or parcels of land shall be permitted, constructed, operated, or maintained except in accordance with the following standards:

1. Screening and Fencing

Screening shall be required for all high impact industries along all side and rear property lines based on the following types:

A. *Broken Screen*, which includes:

- a. Deciduous and/or evergreen trees placed a maximum of 25 feet apart on center, and
- b. Shrubs placed a maximum of ten feet apart on center.
- c. Opaque wooden fences, masonry walls or landscaped earth berms a minimum of six feet in height may be used to replace the requirement of shrubs.

B. *Opaque Screen*, which includes:

- a. Deciduous trees placed a maximum of 20 feet apart on center, and
- b. Evergreen trees placed a maximum of ten feet apart on center in two staggered rows or five feet apart in a single row, and
- c. Shrubs placed a maximum of ten feet apart on center.
- d. Opaque wooden fences, masonry walls or landscaped earth berms a minimum of eight feet in height may be used to replace the requirement of shrubs, and to decrease the required number of evergreen trees by ½.

The following standards shall apply for trees and shrubs planted to meet the aforementioned screening requirements:

- A. Trees shall be setback at a distance equal to ½ the canopy spread at maturity from the property line.
- B. Trees shall be a minimum of six feet tall and have a 1 and ½ inch trunk caliper measured six inches above grade upon planting.
- C. Trees shall be of a type that will reach a height of at least 25 feet at maturity and must be at least 75% of the designated height within five years of planting.
- D. Shrubs shall be a minimum of one foot tall upon planting.
- E. Shrubs shall be evergreen and of a type that will reach a height of at least five feet at maturity or within five years, whichever is shorter.

Existing vegetation may be used in lieu of the required screens. The existing vegetation must be mature, at least ten feet in width at ground level, and meet the intent of the definition listed in Section 2.

Security fencing in a form that acts to prohibit access to the site shall be required around the area of operation for all Mining, Quarrying, and Extraction operations. Fences shall be at least eight feet in height.

2. Landscaping Plans

A landscaping plan illustrating the required setbacks, screening, and other site separation requirements shall be submitted through the Development Permit process for any use regulated by this ordinance. The Ordinance Administrator may reasonably require adjustments and alterations to any proposed landscaping plan as is necessary to comply with the provisions of this ordinance.

3. Setbacks and Screening

The following table details the spatial requirements for each category of land use:

Industry classification (1)	Land Use Setback (2)	stream setback (3)	Screening Type (4)
Class I	100'	100'	A
Class II	250'	100'	A
Class III	500'	100'	B
Class IV	1,000'	100'	B
Class V	2,000'	100'	B

(1) As defined in Article II, Section 1.

(2) The land use setback is the distance required between the area of operation of any high impact industry and any property line or right-of-way. However, employee and visitor parking may occur up to 25 feet from any property line and is not required to meet the overall land use setback. Any high impact industry that has frontage on a State or Federal numbered

highway may utilize the recorded right-of-way of that road in the determination of the area of operation setback. The following is an example of this provision:

Required setback	250'
<u>Recorded right-of-way</u>	<u>-100'</u>
Adjusted setback	150'

(3) The stream setback is the distance required between the area of operation of any high impact industry and the top of the bank of any perennial streams as shown on the most recent version of the USGS 7.5 minute quadrangle topographic maps.

(4) As defined in Section 3, Number 1.

4. **Lighting**

All lighting shall be pointed downward with the primary cone of illumination being entirely contained on the subject property.

5. **Noise Mitigation**

A Noise Mitigation Plan shall be submitted, prior to obtaining a development permit, which demonstrates that the methods for reducing or containing noise generated by the use. In addition, no high impact industry shall exceed a *Ldn* of 55 dB, measured at any property line. (Source: US Environmental Protection Agency, 1974 Levels Document)

Ldn (Day-Night Sound Level) – The A-weighted equivalent sound level for a 24 hour period with an additional 10dB weighting imposed on the equivalent sound levels occurring during nighttime hours (10 pm to 7 am).

dB (decibel) – A unit of sound pressure.

A-Weighted Sound Level – A decibel value which denotes either a sound level at a given instant, a maximum level, or a steady-state level.

6. **Traffic Impact Analysis**

When a high impact industry is proposed to be located on a road that is not designated as a State or Federal numbered thoroughfare, or would be at least ½ mile from any such thoroughfare, and would create an amount of traffic, in terms of vehicular trips per day, that would push the road in which the industry is gaining access over its practical carrying capacity as defined by the North Carolina Department of Transportation (NCDOT), a traffic impact analysis (TIA) shall be performed by a NC licensed engineer or transportation planner and shall be provided by the applicant. The most updated version of the Institute of Transportation Engineers, *Trip Generation Manual* shall be used to determine the average number of daily trips generated by the proposed industry. These numbers will be

compared to the most recent traffic counts performed by NCDOT for the surrounding road network.

As part of the TIA, specific recommendations for the mitigation of the impacts from the proposed traffic must be provided. These recommendations should address, but are not limited to: acceleration and deceleration lanes, road design standards, shoulder width, stoplights, and outlying intersection improvements.

The results of the TIA shall be submitted to the local NCDOT division office, accompanied by a formal request from the County and the industry that the recommended improvements to be implemented by the State.

7. High-Impact Industry Areas

In an effort to promote the location of industries within the same general areas, a relaxation of the setback and screening requirements specified in this Section will be allowed in the following situations:

- A. When a high impact industry is proposed to be located on a site that is contiguous to an existing high impact industry, the land use setback and screening requirements specified in this Section shall not apply to the property lines that are contiguous to the existing high impact industry. All other provisions of this Ordinance shall apply.
- B. When a high impact industry is proposed to be located on a site that is contiguous to a legally existing industrial park as defined in this Ordinance, the land use setback and screening requirements specified in this Section shall not apply to the property lines that are contiguous to the external boundary line of the industrial park. All other provisions of this Ordinance shall apply.
- C. When a high impact industry is proposed to be located on a site that is within a legally existing industrial park as defined in this Ordinance, the land use setback and screening requirements specified in this Section shall not apply to the property lines that are contiguous to other sites within the industrial park. All other provisions of this Ordinance shall apply.

8. Railroad Site Exemption

When a high impact industry is proposed to be located on a site that is contiguous to an active railroad and the high impact industry will utilize a spur track from the railroad to receive and/or ship goods, the land use setback and screening requirements specified in this Section shall not apply to the property line that is contiguous to the railroad right-of-way. All other provisions of this ordinance shall apply.

9. Reporting

At any time a report is required, or in the event that a citation is issued, by the State of North Carolina concerning noise, dust, odor, or other environmental issues, the County shall receive a copy of the report and/or citation, in addition to the resulting action taken by the affected industry. The responsibility for this reporting will be that of the industry.

Article III: Pre-existing High Impact Industries

Section I. Application to Existing Non-Conforming High Impact Industries

1. Any high impact industry existing upon the effective date of this ordinance which does not conform to the requirements of this ordinance may continue so long as the use is not discontinued for more than ten (10) consecutive years.
2. A legal nonconforming high impact industry may be altered, added to, expanded, or enlarged at the site of its operations if the same is undertaken solely on the property owned or leased to the high impact industry as of the effective date of this ordinance. This expansion will be subject to a 25 foot setback for Class I, II, and III industries, and a 50 foot setback for Class IV and V industries.
3. A nonconforming high impact industry may acquire or lease land subsequent to the date of adoption of this ordinance that is contiguous to property that meets the requirements in subsection 2 above. This land will be subject to a 100 foot setback, regardless of the industry classification.
4. In the event that a non-conforming building is damaged or destroyed by fire, flood, or other hazard, repairs may be made, or reconstruction may take place, provided the original foundation footprint is maintained.

Section 2. New High Impact Industries Regulated

After the effective date of this ordinance all new high impact industries as well as any pre-existing high impact industries which are moved, altered or enlarged shall conform to the regulations contained in this ordinance except as set forth in Article III, Section 1.

Article IV: Permit Procedures

Section 1. Permitting Process

1. Development Permit Required

No building or other structure subject to this ordinance shall be erected, moved, added to, or structurally altered without a development permit having been issued by the Ordinance Administrator. All development permits are valid for one year. If a building permit is not obtained during that time, the development permit will be considered null and void. No building permit shall be issued except in conformity with the provisions of this ordinance or as duly authorized by the Planning Commission upon timely appeal pursuant to Article V of this ordinance.

2. Applications for Development Permits

All applications for development permits shall be accompanied by plans in duplicate, drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the parcel of any buildings already existing; the location and dimensions of the proposed building or alteration; and compliance with the standards of Article II, Section 3. All plans must be prepared by a licensed engineer or surveyor.

The application shall include such other information as may reasonably be required by the Ordinance Administrator, including a description of all existing or proposed buildings or alterations; existing and proposed uses of the buildings and the parcel; conditions existing on the parcel; and such other matters as may be necessary to determine conformance with, and provide for the enforcement of, this ordinance.

One copy of the plans shall be returned to the applicant by the Ordinance Administrator, marked either as approved or disapproved and attested to by his signature on such copy. The second copy of the plans, also so marked shall be retained by the Ordinance Administrator.

3. Administrator to Maintain Permit Records

The Ordinance Administrator shall maintain a record of all development permits.

4. Remedies for Noncompliance

The failure to obtain any required development permit shall be a violation of this ordinance. Further, development permits shall issue on the basis of

applications approved by the Ordinance Administrator and authorize only the use, arrangement, and construction applied for and approved. Any use, arrangement or construction not in compliance with that authorized shall be a violation of this ordinance, and shall be subject to penalties and remedies provided by Article VI of this ordinance.

Article V: Appeals and Variances

Section 1. Planning Commission

The Rutherford County Planning Commission shall be designated as the Board of Adjustment pursuant to GS 153A-345, and shall hear appeals, requests for variances, and all challenges to the decision or interpretation of the Ordinance Administrator.

Section 2. Powers of Planning Commission

The Commission shall have the following powers in reference to this ordinance:

1. To hold public hearings to hear, decide and review appeals from any order, requirement, decision, or determination (including permit denial) made by the Ordinance Administrator in the performance of its duties; and
2. To hold public hearings to hear and decide applications for variances from the requirements of this Ordinance in accordance with Article V, Section 5. Nothing in this section shall be construed to broaden the power of the Commission to permit a use by variance beyond that power given in Article V, Section 5.

Section 3. Administration

The Commission shall adopt rules of procedure and regulations for the conduct of its affairs.

All meetings of the Commission shall be open to the public. The Commission shall keep a record of its meetings, including of the vote of each member on every question, a fair and accurate summary of the evidence submitted to it, the documents (or accurate copies thereof) submitted to it and of all official actions. The Commission shall give due notice of matters coming before it.

In presenting an appeal, the petitioner shall bear the burden of proof, which shall be by the greater weight of the evidence.

All evidence presented to the Planning Commission shall be sworn.

The person acting as Chairman of the Commission is authorized to administer oaths to any witness in any matter coming before the Commission.

Application for variances, requests for interpretations and appeals for review of decisions of the Ordinance Administrator shall be filed with the Department of Planning and Inspections, as agent for the Commission, on forms provided by the department.

It shall be the responsibility of the Ordinance Administrator to notify by certified mail the applicant or appellant of the disposition which the Commission makes of any matter before it.

It shall be the responsibility of the Ordinance Administrator to issue a permit in accord with the Commission's action on an appeal or application, if a permit is authorized by Commission action.

Section 4. Quorum and Vote Required

A quorum of the Commission, necessary to conduct any business of the Commission in relation to this ordinance, shall consist of five members. Five members of the Planning Commission shall be designated to hear all requests defined in this ordinance. The remaining five members of the Commission shall be designated as alternates. In the event that one or more of the primary five members is absent, an alternate may take his or her place in the decision making process.

The concurring four-fifths vote of the total membership of the portion of the Commission designated to hear requests resulting from the implementation of this ordinance shall be necessary in order to:

1. Reverse any order, requirement, decision or determination of the Ordinance Administrator;
2. Decide in favor of the applicant any matter upon which it is required to pass by this Ordinance; or
3. Approve an application for a variance.

Section 5. Application of the Variance Power

A variance shall only be allowed by the Planning Commission in cases involving practical difficulties or unnecessary hardships. Any authorizing of a variance shall not destroy the intent of the ordinance. Any authorized variance, including the affirmative findings of fact that substantiate such authorization, shall be recorded in the minutes of the Rutherford County Planning Commission. A hardship, as used in the context of this section, shall be considered to be some

unique or unusual character of the proposed site, including but not limited to unique size, shape, contour, or distance requirement. An economic hardship to the applicant is not to be considered for a variance.

The Commission may grant a variance upon finding that the following conditions exist:

1. Extraordinary and exceptional conditions exist pertaining to the particular place or property in question because of its size, shape, or topography.
2. The variance will not confer upon the applicant any special privileges that are, or would be, denied to other similarly situated individuals.
3. This ordinance would deprive the applicant of rights commonly enjoyed by other similarly situated individuals.
4. The variance would not seriously deter from the purpose and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare.
5. The special circumstances causing the need for a variance(s) are not the fault of the applicant.

The Commission may impose reasonable conditions upon the granting of any variance in order to protect the public interest or neighboring property owners. Violation of any such conditions shall be a violation of this ordinance and subject to the penalties set forth in Article VI of this ordinance.

Section 6. Application of Interpretation Power

An appeal from an order, requirement, or decision of the Ordinance Administrator shall be decided by the Commission duly supported by competent evidence. Such appeal shall be taken within thirty (30) days of the written decision by filing with the Ordinance Administrator a notice of appeal specifying the grounds thereof. In exercising this power, the Commission shall act in a prudent manner so that the purposes and intent of the Ordinance shall be served. No decision shall have the effect of varying the terms of the Ordinance or permitting as a matter or right any use otherwise limited or prohibited hereunder.

Section 7. Appeal Stays Further Proceedings

An appeal to the Planning Commission from a decision or determination of the Ordinance Administrator stays all proceedings in furtherance of the decision or determination appealed from, except as provided in Section 8, during the pendency of the appeal.

Section 8. Exceptions to Stay of Action

An appeal to the Planning Commission of a decision or determination of the Ordinance Administrator shall not stay proceedings in furtherance of the decision or determination appealed from, if the Ordinance Administrator certifies either:

1. That a stay would cause imminent peril to life or property; or
2. That the situation subject to the appeal is transitory in nature and therefore, an appeal would seriously interfere with enforcement of this Ordinance.

In each instance, the Ordinance Administrator shall set forth in the certificate facts to support its conclusion.

Section 9. Appeals of Commission Actions

Every decision of the Commission shall be subject to review at the instance of any aggrieved party in the Superior Court by proceedings in the nature of a petition for writ of certiorari. Such proceedings in the Superior Court shall be initiated within 30 days of the filing of the decision in the office of the Ordinance Administrator or the delivery of the notice required in Article VI, Section 3, whichever is later. Appeals not received within this 30 day period are not timely. The Superior Court is authorized to stay enforcement of this Ordinance during the pendency of an appeal from the decision of the Planning Commission upon a hearing and the posting of a bond sufficient to the Court which will adequately protect the interests of the County.

Article VI: Enforcement and Penalties

Section 1. Administration and Enforcement

The Ordinance Administrator shall be responsible for the administration and enforcement of this Ordinance.

If the Ordinance Administrator shall determine that any of the provisions of this Ordinance are being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to within ten (10) working days correct the violation. He may order the discontinuance of illegal use of land, buildings, or structures; the removal of illegal buildings or structures or of additions, alterations, or structural changes thereto; the discontinuance of any illegal work being done; and may take any

other action authorized by this Ordinance to insure compliance with, or to prevent violation of, its provisions.

Section 2. Conflict with Other Laws

Wherever the provisions or application of this Ordinance impose higher standards than are required in any other local ordinance or regulation, the provisions of this Ordinance shall govern. Wherever the provision of any other statute or local ordinance impose higher standards than are required by the provisions or application of this Ordinance, the provisions of such other statute or local ordinance shall govern.

Section 3. Penalties

Any person, firm or corporation who violates any provision of any article; or who shall violate or fail to comply with any order made hereunder; or who shall continue to work upon any structure after having received written notice from the Ordinance Administrator to cease work, shall, upon conviction, be guilty of a Class 3 misdemeanor as provided by N.C.G.S. § 14-4 and shall be punishable by a fine not to exceed \$50.00, or imprisonment not to exceed 20 days. Each day such violation shall be permitted to exist shall constitute a separate offense. Notice of violation shall be sufficient if directed/delivered to the owner, the agent of the owner, or the contractor.

In lieu of or in addition to the criminal penalties outlined above, each person violating this ordinance shall be subject to a civil penalty, under N.C.G.S. § 153A-123(c), in the amount of \$200.00 per day. No penalty shall be assessed prior to notice to the violator. For every day a violator is in violation of this ordinance, it shall be considered a separate offense. If the violator does not pay such penalty within 30 days of notification of its assessment by written citation it and any subsequently accruing penalty may be recovered by the County in a civil action in the nature of a debt. Any contest of said penalty shall be by the appropriate action taken in the General Court of Justice for Rutherford County.

Section 4. Severability Clause

Should any section or provisions of this Ordinance be declared by the Courts to be unconstitutional or invalid, such decision shall not affect the validity of this Ordinance as a whole, or any part hereof other than the part so declared to be unconstitutional or invalid.

Section 5. Ordinance Amendments

This Ordinance may be amended by the Board of Commissioners following a public hearing on the proposed changes. The Board shall cause notice of the hearing to be published once a week for two successive calendar weeks. The

notice shall be published the first time not less than ten (10) days no more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.